

## Current Issues in Archeological Protection for the Department of Justice

*The statement that follows was presented to the Interagency Archeological Protection Working Group (IAPWG) on February 7, 1994, by Jo Ann Harris, Assistant Attorney General, Criminal Division, United States Department of Justice. IAPWG is an informal headquarters-level organization representing federal agency chief law enforcement officers, departmental solicitors, and the appropriate divisions with the Department of Justice. IAPWG meets periodically to exchange information, identify needs, and implement programs and actions to improve archeological resources protection nationwide. This recent IAPWG meeting was held in the National Park Service Director's Conference Room at the Department of the Interior, and Ms. Harris was introduced by Jerry Rogers, Associate Director for Cultural Resources, National Park Service.*

**T**hank you, Mr. Rogers, for your very gracious remarks. It is my pleasure to provide some brief comments on an area in which I have both a professional and personal interest—"Current issues in archeological protection for the Department of Justice." Indeed, this is probably the first time ever that the Assistant Attorney General for the Criminal Division has a history of literally digging in the dirt with a bunch of wonderful archeologists both in the United States and the far reaches of Siberia. My interest: Prehistoric North America.

This is an exciting time for all of us who are concerned about the protection of the richly varied archeological resources which constitute part of the treasure of our history and pre-history in the United States.

Since the enactment of the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. § 470aa et seq., and the recent enactment of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), a portion of which is codified as the Illegal Trafficking in Native American Human Remains and Cultural Items Act, 18 U.S.C. § 1170, we now have tools which, if utilized properly—in a criminal, civil or administrative context—or some combination thereof, can be an effective deterrent in preventing further destruction of our archeological and cultural resources.

On January 18, 1994, the United States Supreme Court denied certiorari in an important case construing a key provision of the Archeological Resources Protection Act. In *United States v. Gerber*<sup>1</sup>, Judge Posner of the Seventh Circuit Court of Appeals held, for a unanimous court, that section 470ee(c) of ARPA was **not** limited to archeological objects removed from federal and Indian lands but that it also applied, in certain circumstances, to the removal of archeological resources from private property without the owner's permission. In *Gerber* the "Indian relic" predators, without permission, entered upon land in Indiana owned by the General Electric Company and,

Knight Foundry has developed a three-day "hands-on" workshop for adults. The Industrial Living History Workshop, advertised nationwide, has been well received. Students actually work in the foundry, machine shop, blacksmith shop, and pattern shops to learn the skills of the late 1800s. The class regularly has 21 to 28 students, assembled into groups of seven. At each work station students receive a brief introduction to the craft and are then given an opportunity to practice these hand skills under the direction of experienced instructors. Students are encouraged to bring foundry projects with them; these may be molded and cast as part of the workshop. In the foundry, students receive instruction in the basic skills of green-sand molding; they then are allowed to mold several items. In the machine shop, students are introduced to water-powered machine tools and then given an opportunity to operate the lathes, planers, and radial-arm drill press. The blacksmith portion gives students the chance to do some forge work while producing several items. Students learn the basics of pattern making in the pattern shop and finally are shown how the cupola furnace is prepped and fired for a melting operation. During the final session, those students who wish to participate may also step in with the foundry staff to pour some iron castings.

During recent workshops, students from all walks of life have come to Sutter Creek to experience turn-of-the-century technology. Several participants have produced castings that they will use in restoration projects. In June 1994, Jon Mulholland from the NPS San Francisco Maritime Museum took the class and was able to produce rudder pins for the ferryboat *Eureka*, to replace an original 100-year old pin that was lost. Commenting on the Foundry, Jon said: "Using traditional methods lends authenticity. This is our only option for reproducing historic castings. They have a full pattern shop and machine shop ... there is no other resource to duplicate these patterns." Past students have returned home and produced foundry patterns from which the Foundry then produced castings. Some of these included parts for a Shay locomotive restoration project and the tailstock for an antique lathe. Other projects of the Foundry included fire box grates for a Case steam engine, exhaust manifolds for a 1936 Packard, assorted gas engine parts, printing press parts, and weights for an 18th-century French clock. Finally, one of their yearly customers is an excursion railroad near Yosemite. They run an old Shay locomotive and cars on a section of logging track in the foothills of the Sierra Nevadas. The track is very steep and crooked so they go through lots of brake shoes. The Foundry supplies them about 24 brake shoes each spring.

A non-profit organization, Friends of Knight Foundry has also been formed to assist with the preservation and educational programs associated with the site. They have begun to develop a long-range plan for acquiring, operating and preserving the site; and to begin fund raising activities.

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Ed Arata is the manager of Historic Knight Foundry in Sutter Creek, CA. For more information, you may call Mr. Arata at 209-267-5543.

(Harris—continued from page 33)

in a manner that constituted criminal conversion and criminal trespass under Indiana state law, excavated and removed numerous prehistoric artifacts from an ancient burial mound affiliated with the “Hopewell phenomenon” culture. This “GE Mound” in southwestern Indiana was one of the five largest Hopewell burial mounds known. Gerber and his cohorts tore it apart. The case was successfully prosecuted by the United States Attorney’s Office for the Southern District of Indiana.

As Assistant Attorney General, Criminal Division, Department of Justice, Jo Ann Harris leads a Division of 400 Federal prosecutors and lawyers charged with enforcing the nation’s criminal laws and formulating national law enforcement policy.

Prior to her nomination in the Fall of 1993 to head the Criminal Division, Jo Ann Harris was a Manhattan-based sole practitioner with a Federal practice specializing in white collar crime. Before entering private practice in 1983, she was a Federal prosecutor in the Southern District of New York, first as an Assistant United States Attorney, then as Deputy Chief of the Criminal Division, and finally as Executive Assistant United States Attorney. Between 1979 and 1981, she was based in Washington as Chief of the Fraud Section, Criminal Division at the Department of Justice.

Jo Ann Harris has served on three Independent Counsel staffs in connection with the Washington-based investigation of corruption at the Department of Housing and Urban Development during the 1980s, the 1990 investigation of New York Mayor David Dinkins, and the 1985 investigation of the Charles Point Resource Recovery Facility in Westchester County, New York.

Ms. Harris has been a teaching team leader and team member in a multitude of programs for the National Institute for Trial Advocacy (NITA), and in 1990 she was awarded the NITA Faculty Award “for inspiration, excellence and dedication for fourteen years of service in teaching advocacy skills.” She also has held an appointment as Lecturer at Harvard Law School, and has taught Trial Skills at numerous law schools including Emory, Fordham, New York University, Pace, and Hofstra. During 1992-1993, Ms. Harris held an appointment as Visiting Professor and Director of Trial Advocacy at Pace University. She also was a member of the Board of Pace University’s Battered Women’s Justice Center and has led teams of lawyers teaching young lawyers how to represent battered women in court.

Jo Ann Harris maintains an intense interest in archeology and prehistory. She has been an active member of the Center for the Study of the First Americans for several years, as well as serving on its Advisory Board, and has been a participant in formal archeological excavations at the Mammoth Meadow site in southwestern Montana.

A report on the training course, “Overview of Archeological Protection Law,” and Ms. Harris’ presentation during that 16-hour interagency, intergovernmental program will be published in the *Federal Archeology Report*, volume 7, number 3, which will be available in early winter, 1994.

Gerber, in combination with *United States v. Austin*<sup>2</sup>, a decision of the Ninth Circuit Court of Appeals which upheld the constitutionality of ARPA, provides a sound legal basis for successful criminal prosecutions under ARPA. Given this current state of the law we see no sound legal reason for not prosecuting appropriate ARPA violations, even when they occur on private property.

## Investigations

Historically, almost all criminal ARPA offenses have been investigated by agents and archeologists employed by the federal agency that has responsibility over the land on which the unlawful excavation and removal occurred, with the Federal Bureau of Investigation being called in to assist, if requested, in major investigations or when no federal land managing agency has jurisdiction—as was the case in the *Gerber* prosecutions. Any subsequent federal prosecution is then pursued by the responsible United States Attorney’s Office, with legal assistance provided, if requested, by attorneys with the Criminal Division of the Department of Justice.

## Prosecutions

A paramount interest of the Department of Justice is ensuring that there are sufficient Assistant United States Attorneys located throughout the country who are versed in the various technical requirements of ARPA and other criminal and civil provisions which can be used to prosecute archeological resource violations, such as the theft of government property statute [18 U.S.C. § 641] and the depredation of government property statute [18 U.S.C. §1361]. To this end, Department of Justice Criminal Division attorneys provide two on-going services and assist in a third.

### 1. Inquiries

First, attorneys from the General Litigation and Legal Advice Section and the Asset Forfeiture Office are available to respond to any criminal and forfeiture matter inquiry by any Assistant United States Attorney or any attorney, investigator, archeologist or other employee of any federal agency involved with archeological protection enforcement activities.

### 2. The Book

Second, in 1992, Criminal Division attorneys, in conjunction with the Archeological Assistance Division and other members of the Interagency Archeological Protection Working Group, prepared a two-volume loose-leaf publication entitled “Archeological Resources Protection: Federal Prosecution Sourcebook.” This Sourcebook has been distributed to all 94 United States Attorney Offices plus all branch offices of the United States Attorneys. In addition, the Archeological Assistance Division has distributed the Sourcebook to a wide variety of agency attorneys, land managers, archeologists and criminal investigators along with officials with various Indian tribes. We feel that this Sourcebook, which is supplemented annually, is a valuable training tool which further educates its users and, we believe, eventually leads to more ARPA prosecutions.

### 3. The Conference

Finally, Criminal Division attorneys, in association with the Archeological Assistance Division and the Executive Office of United States Attorneys of the Department of Justice, participate in the annual two-day conference on "Overview of Archeological Protection Law" co-sponsored by the Archeological Assistance Division and the Department of Justice. This conference has provided intensive training to over forty Assistant United States Attorneys in addition to a number of agency personnel and other individuals involved in the preservation of our rich archeological heritage.

Thank you for the chance to present these short remarks. I look forward to working with you to help protect our archeological resources.

#### Notes

<sup>1</sup> 999 F. 2d 1112 (7th Cir. 1993), cert. **denied**, 114 S. Ct. 878 (January 18, 1994). The lead defendant, Arthur Gerber, was sentenced in July 1992 to 12 months imprisonment followed by 3 years supervised release, in addition to a \$5,000 fine, a \$125 special assessment, and a \$4,750 forfeiture. Gerber was also ordered not to sell, purchase, barter, excavate any archeological resources, nor sponsor, organize, or attend any shows or exhibitions that have any archeological resources exhibited. Gerber commenced serving his imprisonment at the Fort Worth Federal Correctional Institution in May 1994. Gerber's four associates were all sentenced to 2 years probation with the condition that they serve specified periods of either work release or home detention ranging from 30 days to 180 days. Two of these associates were also fined \$2,000 and \$5,000. All of the defendants commenced serving their sentences in May 1994.

<sup>2</sup> 902 F. 2d 743 (9th Cir.), cert. denied, 498 U.S. 874 (1990).

## Teaching with Historic Places Lesson Plans

The National Park Service's National Register of Historic Places and the National Trust for Historic Preservation are pleased to announce the publication of five new Teaching with Historic Places lesson plans.

- First Battle of Manassas: An End to Innocence
- Camp Hoover: A Presidential Retreat
- Woodrow Wilson: Prophet of Peace
- Life on an Island: Early Settlers off the Rock-Bound Coast of Maine
- Castolon: A Meeting Place of Two Cultures

For more information, please write to:

The Preservation Press  
National Trust for Historic Preservation  
1785 Massachusetts Avenue, N.W.  
Washington, D.C. 20036

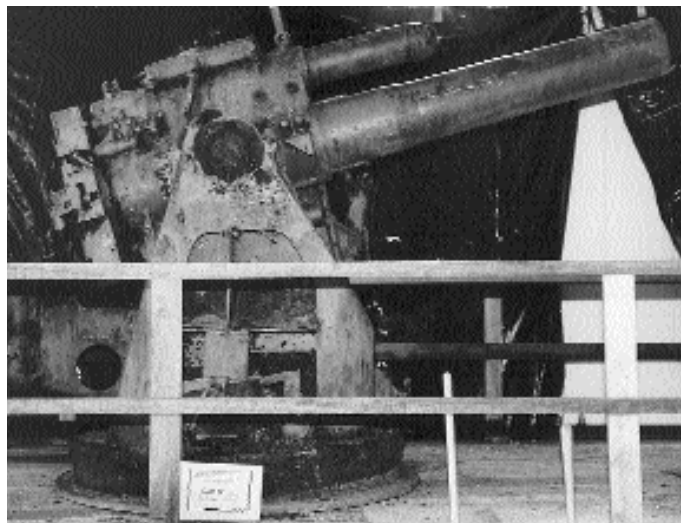
or call, toll free: (800) 766-6847

# Preparing for the 50th Anniversary of Guam Liberation: Metals Conservation Course and Demonstration Project

Phase II of the Conservation Management of Historic Metals in a Tropical Marine Environment Training Course and Demonstration Project was held in June, at War in the Pacific National Historical Park (WAPA). Phase I was held on Wotje Atoll in the Republic of the Marshall Islands in December 1992 (see "Saving WWII Historic Sites: Metals Conservation Course in the Marshall Islands," *CRM* Vol. 16, No. 5, 1993). At the request of Superintendent Edward Wood, Phase II of the training course was moved to WAPA in Guam. Plans for the faculty of Phase II to stop in the Marshall Islands to inspect and monitor the 120mm gun that was cleaned, primed, and painted with two different paint systems during Phase I was canceled when we learned the runway on Wotje was closed for repairs.

Phase II served two purposes: (1) students from NPS, the U.S. Navy, Guam (GU), Commonwealth of the Northern Mariana Islands (CNMI), Republic of Palau (RP), and the Federated States of Micronesia (FSM) were trained and three WWII guns were cleaned, primed, and painted in preparation of the 50th Anniversary of Guam Liberation Day, July 21, 1944. Phase II was sponsored by the Western Regional Office (WRO) of the National Park Service, WAPA, the Guam Historic Preservation Office, and the Republic of the Marshall Islands in cooperation with the Arizona Memorial Museum Association and was funded by WAPA and the FY94 NPS Cultural Resources Training Initiative.

*(Look and Spennemann—continued on page 36)*



200mm (8-inch) coastal defense gun prior to treatment.